

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of

Amendment of Section 73.202(b)

Table of Allotments

FM Broadcast Stations

(Cedar Bluff, Virginia and

Gary, West Virginia)

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MM Docket No. _____

RM- _____

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Audio Division

PETITION FOR RULEMAKING

Monterey Licenses, LLC ("Monterey"), by its attorneys, hereby requests that the Commission conduct a rulemaking proceeding to amend Section 73.202(b) of the Commission's Rules, the Table of FM Allotments, by reallocating Channel 299C3 from Cedar Bluff, Virginia to Gary, West Virginia, as that community's first local service, and amending the license of WHQX(FM) to specify Gary as the station's new community of license.

Discussion

Monterey is the licensee of WHQX(FM), Cedar Bluff, Virginia. Monterey seeks to change WHQX(FM)'s community of license from Cedar Bluff, Virginia to Gary, West Virginia because Monterey has determined that Gary has a need for first local service – a need that can be fulfilled without depriving Cedar Bluff of its only local service, as WYRV(AM) would remain licensed to Cedar Bluff. As shown herein, the proposed community of license change is fully consistent with the Commission's guidelines set forth in *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4

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FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) (“*Community of License MO&O*”).

Gary is an incorporated city of 917 persons,¹ and is located in McDowell County, West Virginia. It has its own mayor, and its residents are served by The City of Gary Police, The City of Gary Fire Department, Gary High School, Gary Elementary School, and several churches. Its businesses include, among others, Gary Fabrication, Inc., Gladys’ Kitchen, TJ’s Restaurant, Tru-Line, Inc., First National Bank of Keystone, and Bantam Market. Residents of Gary are cared for by doctors and dentists at the local Tug River Health and Dental clinics, the Tug River Continuous Care Center and the Nursing Home Group. In short, Gary is a community deserving of a first local service.

Monterey has determined that Channel 299C3 can be reallocated to the city of Gary as its first local service. An engineering study of the proposed allocation, demonstrating full compliance with the technical standards of allocating a new channel, is attached hereto as *Exhibit A*. The proposed change in community of license is mutually exclusive with WHQX(FM)’s existing authorization because the proposed reallocation of Channel 299C3 to Gary conflicts with the present operation of WHQX(FM) on Channel 299C3 in Cedar Bluff. Therefore, the station’s license can be modified without affording other interested parties an opportunity to file competing expressions of interest. *See* 47 C.F.R. § 1.420(i).

The geographic coordinates for Gary are listed at North Latitude 37° 21’ 48” and West Longitude 81° 33’ 00” and the present WHQX(FM) transmitter site is located at North Latitude 37° 08’ 00” and West Longitude 81° 35’ 43”. Given the distance between the present

¹ Population figure is based on the 2000 U.S. Census. *See* http://factfinder.census.gov/servlet/BasicFactsTable?_lang=en&_vt_name=DEC_2000_P_L_U_GCTPL_ST7&_geo_id=04000US54 (visited July 23, 2002).

WHQX(FM) transmitter site and the city reference coordinates for Gary (25.9 kilometers), WHQX(FM) would not provide city grade coverage to Gary using uniform terrain assumptions. *See Exhibit A*, at 2. However, WHQX(FM) qualifies under the *Woodstock* exception permitting the use of actual terrain data as the station will continue to operate from its current transmitter site and FAA approval of the proposed antenna structure has been obtained. *See Woodstock and Broadway, Virginia*, 3 FCC Rcd 6398 (1988); *see also Exhibit A*, at 2-3. As shown in the attached engineering exhibit, when using actual terrain data as permitted by *Woodstock*, WHQX(FM) provides the requisite principal community coverage to Gary as required by Section 73.315(a) of the Commission's rules. *See Exhibit A*, at Fig. 1.1.

The proposal set forth in this Petition is also consistent with the procedures authorized in the Commission's *Community of License MO&O*. Reallocating Channel 299C3 to Gary would permit Gary to receive its first local service, thereby serving the most fundamental of the Commission's allotment priorities. According to the Commission:

“[T]here are virtually no populated areas of the country where our higher allotment priorities, such as first reception service, have not been attained. Therefore, as a practical matter, provision of first local service is the highest of our allotment priorities which remains in any significant degree unsatisfied.”

5 FCC Rcd 7094, ¶16. Moreover, as noted above, the deletion of Channel 299C3 from Cedar Bluff will not leave that community without a local service as station WYRV(AM) will remain licensed to Cedar Bluff. Thus, the proposed reallocation will serve the Commission's allotment priorities and the public interest.

Should the Commission amend the FM Table of Allotments as requested herein, Monterey will promptly apply for modified facilities for WHQX(FM) so as to permit operation of the station on Channel 299C3 at Gary.

Conclusion

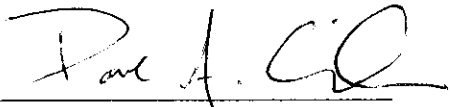
For the reasons stated above, the public interest would be served by the reallocation of Channel 299C3 from Cedar Bluff, Virginia to Gary, West Virginia, as Gary's first local service. Accordingly, Monterey respectfully requests that the Commission institute a rulemaking proceeding that would amend the FM Table of Allotments as follows:

Community	Present	Proposed
Cedar Bluff, Virginia	299C3	-----
Gary, West Virginia	-----	299C3

Monterey further requests that the Commission modify the license of WHQX(FM) to specify Gary as the station's community of license without affording other parties the opportunity to file competing expressions of interest.

Respectfully submitted,

MONTEREY LICENSES, LLC

By: 

David D. Oxenford
Paul A. Cicelski

Its Attorneys

SHAW PITTMAN LLP
2300 N Street, NW
Washington, D.C. 20037
(202) 663-8000

Dated: July 24, 2002

**ENGINEERING STATEMENT IN
SUPPORT OF PETITION
FOR RULEMAKING**

CHANNEL 299C3 - GARY, WV

**Monterey Licenses, LLC
Cedar Bluff, VA**

April 23, 2002

**Prepared For: Mr. David Benjamin
Monterey Licenses, LLC
2511 Garden Road
Building A, Suite 104
Monterey, CA 93940-5376**

CARL E. SMITH CONSULTING ENGINEERS

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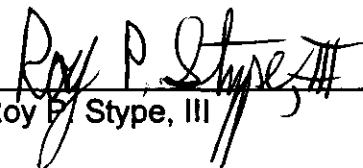
Fig. 1.1 - Present WHQX 70 dBu Contour

ENGINEERING AFFIDAVIT

State of Ohio)
) ss:
County of Summit)


Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by Monterey Licenses, LLC to prepare the attached "Engineering Statement In Support Of Petition For Rulemaking - Channel 299C3 - Gary, WV."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.



Roy P. Stype, III

Subscribed and sworn to before me on **April 23, 2002**.



Notary Public

/SEAL/

NANCY A. ADAMS, Notary Public
Residence - Cuyahoga County
State Wide Jurisdiction, Ohio
My Commission Expires Sept. 5, 2006

ENGINEERING STATEMENT

This engineering statement is prepared on behalf of Monterey Licenses, LLC, licensee of Radio Station WHQX(FM) - Cedar Bluff, Virginia, which presently operates on Channel 299C3. It supports a petition to amend the FM Table of Allotments to change WHQX's community of license to Gary, West Virginia. The data contained in this engineering statement shows that Channel 299C3 can be reallocated from Cedar Bluff, Virginia to Gary, West Virginia for use by WHQX with no relocation of the WHQX transmitter site and no modifications to the present WHQX operating facilities.

The geographic reference coordinates for Gary are:

NL - 37° 21' 48"
WL - 81° 33' 00"

The present WHQX transmitter site is located 25.9 kilometers south of Gary, at the following coordinates:

NL - 37° 08' 00"
WL - 81° 35' 43"

This existing transmitter site is located within Zone II, permitting the operation of a Class C3 facility from this site.

Table 1.0 is an FM allocation study for Channel 299C3, which was conducted from the present WHQX transmitter site. As shown in this table, the present WHQX operating facilities fully comply with the applicable spacing requirements to all other stations, both existing and proposed, requiring protection consideration. Pursuant to the rounding provisions of Section 73.208(c)(8) of the FCC Rules, the 175.81 kilometer spacing to WKZL - Winston-Salem, North Carolina complies with the required spacing of 176

kilometers and the 236.80 kilometer spacing to WIVK-FM - Knoxville, Tennessee complies with the required spacing of 237 kilometers.

At the allotment stage, FCC policy normally requires that uniform terrain be assumed to evaluate whether or not a proposed allotment will provide the required principal community coverage to its proposed community of license. For a Class C3 facility, this would result in a 70 dBu contour extending 23.2 kilometers from the allotment reference coordinates in all directions. Since, as noted above, the present WHQX site is located 25.9 kilometers from the city reference coordinates for Gary, it is obvious that operation with maximum Class C3 facilities from the present WHQX site would not provide the required city grade coverage to Gary under these normal assumptions.

The FCC's *Woodstock* policy, however, provides an exception which permits the use of actual terrain data to evaluate principal community coverage in these circumstances, provided that three criteria are met:

- 1) The petitioner is the only party eligible to apply for the modified allotment being proposed,
- 2) Documentation is supplied to confirm that the petitioner has reasonable assurance that the proposed site will be available for use,
- 3) Documentation is supplied to confirm that FAA approval has been obtained for the tower structure which will be required to implement the proposed facilities.

As outlined below, the proposed change in community of license for WHQX complies with all three of these *Woodstock* criteria:

- 1) Since the proposed reallocation of Channel 299C3 to Gary conflicts with the present operation of WHQX on Channel 299C3 in Cedar Bluff, the petitioner, who is also the licensee of WHQX, is the only party eligible to apply for this modified allotment, pursuant to Section 1.420(i) of the FCC Rules,

- 2) The fact that WHQX presently operates from this site satisfies the requirement to document that the petitioner has reasonable assurance of the availability of the proposed site,
- 3) The existing tower at this site which presently supports the WHQX antenna was granted FAA approval under FAA study number 99-AEA-0793-OE and has been registered under the FCC's Antenna Structure Registration program and assigned Antenna Structure Registration number 1066072.

Thus, based on this information, WHQX qualifies under *Woodstock* to utilize actual terrain data to document that its presently licensed operating facilities, which will continue to be employed if its community of license is changed as proposed herein, provide the required principal community coverage to Gary.

Table 1.1 presents a tabulation of the predicted 70 dBu contour for the present WHQX operating facilities. This contour was projected utilizing the presently licensed operating facilities for WHQX, as extracted from the FCC's Consolidated Database System ("CDBS") and terrain data extracted from the NGDC 30 second terrain database. Figure 1.1 presents this contour on an appropriate map base in relation to the boundaries of Gary. As shown in this figure, when actual terrain is considered, the predicted 70 dBu contour for the presently licensed WHQX operating facilities will encompass all of Gary, as required by Section 73.315(a) of the FCC Rules.

Gary (population 917¹) presently has no local radio service. Thus, the proposal outlined herein would provide Gary with its first local service, advancing the FCC's allotment priorities. The deletion of Channel 299C3 would not deprive Cedar Bluff (population 1085) of its only local service, as WYRV(AM) would remain licensed to Cedar Bluff.

¹All population data in this engineering statement is extracted from the 2000 U. S. Census.

Since WHQX will continue to operate with its presently licensed facilities following the reallocation of Channel 299C3 to Gary, there will be no gain or loss area created by this proposed reallocation. Thus, there is no need to submit detailed information regarding the area and population of such gain and loss areas or the number of other full time services which would exist in such gain and loss areas.

In summary, Channel 299C3 can be reallocated from Cedar Bluff, Virginia to Gary, West Virginia to permit the WHQX license to be modified to specify Gary as its community of license. This proposed reallocation will provide a first local service to Gary, thus advancing the FCC's allocation priorities.

TABLE 1.0

FM ALLOCATION STUDY - CHANNEL 299C3 (107.7 MHz) - GARY, WV

MONTEREY LICENSES, LLC
CEDAR BLUFF, VA

STUDY COORDINATES: 37/08/00 81/35/43

STATION	LOCATION	CHANNEL	CLASS	SPACING (km)	REQUIRED SPACING*	NOTES
WXNW-FM	BRISTOL, TN	245	C	91.50	31.0	
WBVB	COAL GROVE, OH	246	A	165.44	12.0	1
WPSK-FM	PULASKI, VA	296	C3	76.45	43.0	1
WKCB-FM	HINDMAN, KY	296	A	122.04	42.0	
WXLZ-FM	LEDANON, VA	297	A	61.51	42.0	1
WKAZ	MIAMI, WV	297	B	126.71	71.0	
WZLK	VIRGIE, KY	298	A	90.67	89.0	
WKZL	WINSTON-SALEM, NC	298	C	175.81	176.0	1
ALLOTMENT	GLENVILLE, WV	299	A	208.42	142.0	12
WKCA	OWINGSVILLE, KY	299	A	225.22	142.0	1
WIVK-FM	KNOXVILLE, TN	299	C	236.80	237.0	
WEMM	HUNTINGTON, WV	300	B	160.06	145.0	
WLNK	CHARLOTTE, NC	300	C	199.71	176.0	
WYYD	AMHERST, VA	300	C1	200.37	144.0	

* Required Spacing Per Section 73.207 of The FCC Rules

Notes:

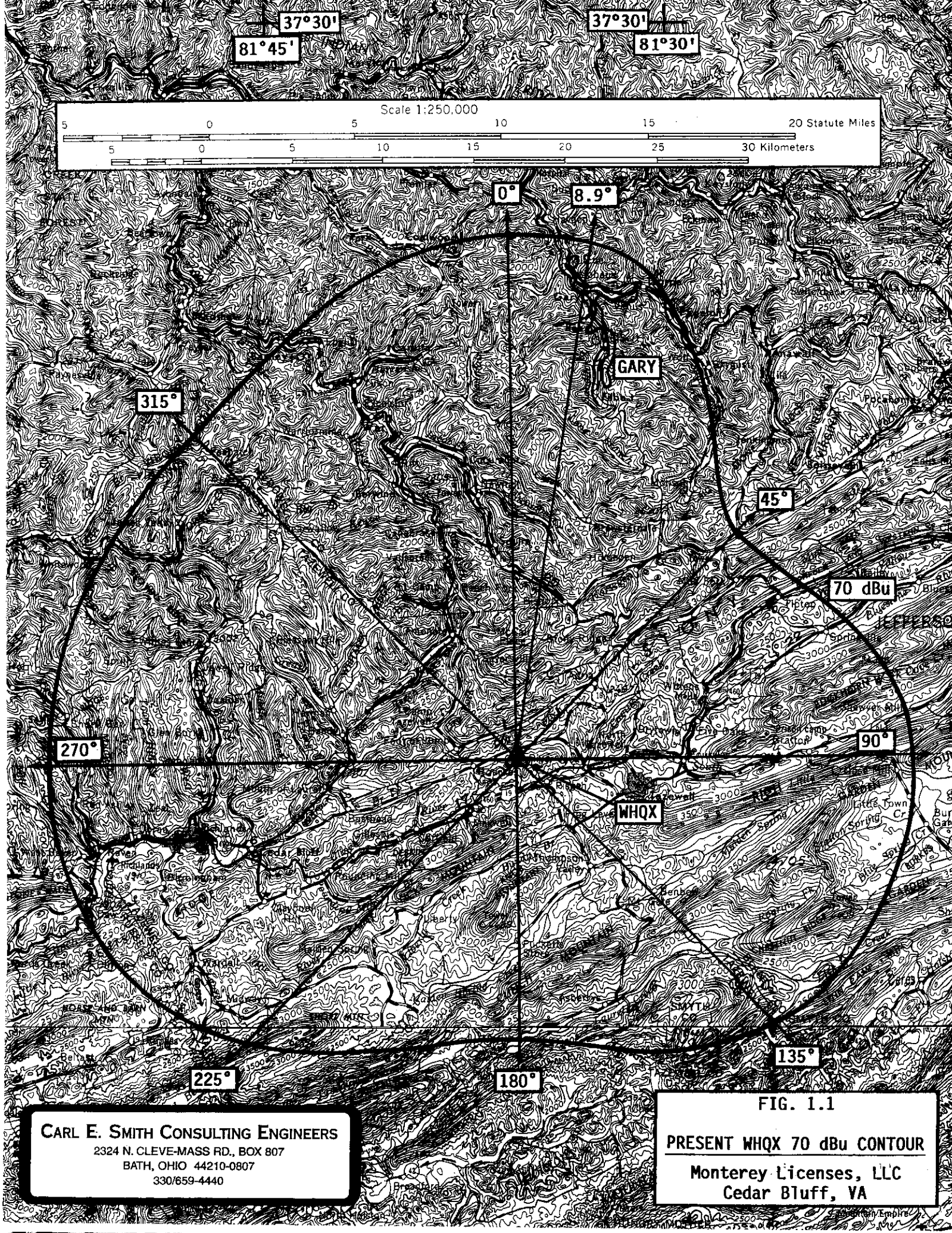
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|--------------------------------------|----------------------------------|
| 1 - Applied For Under Section 73.215 | 7 - Pending Application |
| 2 - Construction Permit | 8 - Petition For Reconsideration |
| 3 - Channel Deletion Proposed | 9 - Proposed Rulemaking |
| 4 - Move From This Channel Ordered | 10 - Rulemaking Petition |
| 5 - Move to This Channel Ordered | 11 - Short-Spaced |
| 6 - One Step Reference Site | 12 - Vacant Allotment |

WHQX
70.0 dBu CONTOUR
(F(50,50) Curves Utilized)

BEARING (Degrees)	AVERAGE TERRAIN ELEVATION (meters)	ANTENNA HAAT (meters)	HORIZONTAL ERP		DISTANCE TO CONTOUR (km)
			(dBk)	(kW)	
0.0 *	671.8	269.2	9.59	9.100	29.0
8.9	674.2	266.8	9.59	9.100	28.8
45.0 *	848.0	93.0	9.59	9.100	17.4
90.0 *	793.2	147.8	9.59	9.100	22.0
135.0 *	815.2	125.8	9.59	9.100	20.4
180.0 *	867.2	73.8	9.59	9.100	15.2
225.0 *	799.1	141.9	9.59	9.100	21.5
270.0 *	730.7	210.3	9.59	9.100	25.7
315.0 *	741.5	199.5	9.59	9.100	25.1

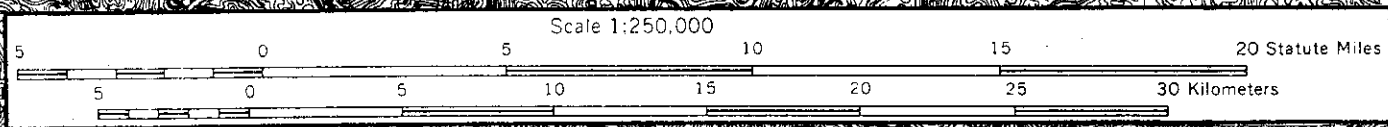
AVERAGE(*) =	783.3	meters			

TABLE 1.1
PRESENT WHQX 70 dBu CONTOUR
Monterey Licenses, LLC
Cedar Bluff, VA



37°30'
81°45'

37°30'
81°30'



GARY

WHQX

70 dBu

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2324 N. CLEVE-MASS RD., BOX 807
BATH, OHIO 44210-0807
330/659-4440

FIG. 1.1
PRESENT WHQX 70 dBu CONTOUR
Monterey Licenses, LLC
Cedar Bluff, VA